



**TRAFFIC COMMISSIONER
FOR THE NORTH EAST OF ENGLAND**

**WRITTEN DECISION OF FIONA A HARRINGTON
DEPUTY TRAFFIC COMMISSIONER**

Re: MR SIMON JAMES CARRINGTON ('the Licence Holder')

**LARGE GOODS VEHICLE ('LGV') DRIVER LICENSING
PASSENGER CARRYING VEHICLE ('PCV') DRIVER LICENSING
ROAD TRAFFIC ACT 1988 (AS AMENDED) ('the Act')**

DECISION

Section 115, Section 116 and Section 117 of the Act

1. The Licence Holder's UK driving licence entitlement to drive LGV and PCV vocationally shall remain suspended and then be REVOKED with effect from 23.59 hours on Sunday 16 April 2017 and he shall be disqualified indefinitely from holding or obtaining a UK driving licence entitlement to drive LGV and PCV from that time.

REASONS

Background

2. The Licence Holder currently holds the UK driving licence entitlement to drive LGV and PCV vocationally.
3. Police Constable 3101 PG David, Dangerous Goods Safety Advisor within the Commercial Vehicle Unit of South Wales Police notified the Traffic Commissioner, by a letter dated 3 February 2017 ('the Police Letter'), with CCTV footage captured by Dow Corning site security cameras copied onto a CD disc enclosed, that the Licence Holder had been convicted at Cardiff Magistrates Court on 27 January 2017 for an offence under the Environmental Protection Act 1990. The conviction resulted from the illegal disposal of controlled waste by him, namely at least 200 litres of acetic anhydride liquid, from a delivery tanker on an access road from the Dow Corning chemical site in Barry, South Wales on 14 April 2016. The Licence Holder was the driver of the tanker vehicle that day and remained in sole control of the vehicle throughout the time the discharge commenced and continued and then driving off in the vehicle.
4. The Traffic Commissioner determined that the Licence Holder should be called to a driver conduct hearing to determine, for the purposes of the Act, whether or not he remains fit to continue to hold each of the foregoing vocational driving licence entitlements by reason of his conduct in committing the offence on 14 April 2016 leading to his conviction. In addition, the Traffic Commissioner determined that, in the interim, the Licence Holder's driving licence entitlements to drive LGV and PCV should be suspended until he attended this hearing. This decision was notified to the Licence Holder by the Office of the Traffic Commissioner, Leeds ('OTC') in a letter dated 2 March 2017.

The Hearing

5. The Applicant duly appeared before me in person on 23 March 2017 at the OTC. He was represented by Mr Anton Balkitis of Rothera Sharp, Solicitors.

6. I reserved my decision at the end of the hearing, notifying the Licence Holder that I would view the CCTV footage described in the Police Letter before making my decision. Mr Balkitis confirmed that he had no objection to me doing so and confirmed that the CCTV footage had already been viewed by both him and the Licence Holder (which I had wished to verify before viewing the footage myself).
7. In addition, Mr Balkitis, helpfully, provided me by way of additional background with a copy of the prosecution summary for the proceedings before Cardiff Magistrates, explaining that he had limited knowledge of those proceedings as his firm had not represented the Licence Holder in those proceedings.
8. I advised the Licence Holder that I continued the suspension of his vocational driving entitlements until further written order by me.

Considerations and findings

9. My role is to review the conduct of the Licence Holder in order to assess his suitability to continue to hold the vocational driving entitlement to drive LGV and/or PCV. Accordingly, I must decide whether he is fit to hold such a driving entitlement or whether his conduct relevant to the entitlement in question shows him to be unfit for that purpose.

Section 121 (a) of the Act defines "conduct" for the purposes of a holder of vocational entitlement to drive LGV as:

"...his conduct as a driver of a motor vehicle"

Section 121(1) (b) of the Act defines 'conduct' for the purposes of the holder of vocational entitlement to drive PCV as:

". . . his conduct both as a driver of a motor vehicle and in any other respect relevant to his holding a passenger-carrying vehicle driver's Licence."

10. I accept as preliminary findings of fact, the Licence Holder's conviction of 27 January 2017 for the deposit of controlled waste without the required environmental permit at the Dow Corning access road on 14 April 2016 and that the Licence Holder had pleaded guilty on the full facts to the offence. I accept that the Licence Holder was fined £1840 by the Magistrates with an order to pay prosecution costs of £956 and a victim surcharge of £170, a combined sum of nearly £3000. He has agreed a payment schedule for this of **REDACTED** that commenced from 10 March 2017 and stated his 'every intention' to pay this in full.
11. As a matter of legal clarity I note that the Police Letter refers to an offence under section 3 of the Environmental Protection Act. Given the offence described I find that this reference should be typed as section 33 of the Environmental Protection Act 1990, which prohibits unauthorised or harmful deposit, treatment or disposal etc. of controlled waste.
12. It was suggested to me that as the Licence Holder was not physically driving the vehicle at the time of the offence the conduct may not be relevant as the 'driver of a motor vehicle' and that this may also go some way to explain why the offence 'does not fit comfortably' with the guidelines contained in the Senior Traffic Commissioner's Statutory Document number 6 on Vocational Driver Conduct. I dismiss such suggestions.
13. Firstly, it is clear from the Statutory Document itself that it does not address every offence that may be committed whilst the driver of a motor vehicle for the purposes of the Act. Paragraph 71 of the Statutory Document specifically states that Annex A, which outlines starting points for decision making, is not exhaustive but covers the most common and frequent types of driver conduct. In the absence of directions of starting point(s) specific to a particular offence, I must deal with that case on its own facts and merits applying the Act and taking into account the remaining relevant guidance and directions contained within the Statutory Document, including appropriate account of any aggravating and mitigating circumstances in reaching the appropriate decision. In each case, I am obliged to take account of all material factors relevant to the question of the particular driver's fitness to hold a LGV and/or

PCV licence, not just the offending conduct under consideration. An individual judgment has to be made.

14. I determine that the conduct to be considered as 'a driver of a motor vehicle' for the purposes of the Act, and therefore in this case, includes all acts and omissions of a Licence Holder relevant to the operation of the vehicle whilst he remains in charge of that vehicle. I determine that the offending behaviour resulting in the conviction in this case is relevant as conduct as a driver of a motor vehicle and is relevant to considerations of fitness for both vocational driving entitlements, LGV and PCV.
15. In addition I find it also relevant conduct falling within the 2nd limb of the definition of conduct in section 121 (b) of the Act applicable (only) in the case of driving entitlement to drive PCV, namely conduct '*in any other respect relevant to his holding a passenger-carrying vehicle driver's Licence.*' A driver of a PCV is, I find, required to respect, and perform his duties in a manner consistent with, the interests of the personal safety of the travelling public. The conviction is for an offence which I find is not in keeping with such a responsibility for public safety.
16. I asked the Licence Holder to provide me with his explanation of the circumstances of the offence committed on 14 April 2016 leading to his conviction.
17. In summary, the Licence Holder explained to me that he was driving the tanker LGV for his employer S. J. Barrick Limited of Barrow-on-Humber, loaded with a delivery of acetic anhydride to the Dow Corning chemical site at Barry, South Wales.
18. Acetic Anhydride is a hazardous substance due to its particular highly corrosive as well as flammable properties and the clear liquid, and vapour from it, has potential to cause serious acute and chronic harm to the health of a person if inhaled, ingested or on skin contact. It is also described as having a strong odour. It converts to acetic acid when added to water. It is used in the chemical, photographic and pharmaceutical industries, for example in the manufacture of fibres, plastics and dyes. (A Google search reveals that it is also used as a precursor ingredient in the manufacture of heroin and is regulated accordingly to prevent the illicit manufacturing of drugs – although I do not find the discharge (and therefore

regulated loss) of the Acetic Anhydride in this case to be relevant to the concerns addressed by those particular regulations.

19. The Licence Holder holds a current ADR certificate issued by the DFT, valid to 22 August 2018, which is required to transport dangerous goods lawfully within the UK. He explained to me that the certificate evidences that he has undertaken appropriate training on the safe transportation by road of such hazardous materials. He has driven professionally for over 20 years and has had a clean driving licence all that time. He is now aged 52 and told me that his only endorsement as a driver was 3 penalty points when he was 19 years old. He has been ADR certified since 2003.
20. The Licence Holder entered the Dow Corning chemicals Site from Docks Road in Barry, passing through the company's gates, security check and weighbridge before proceeding along the access road to the main site – whereupon the delivery was handled by on site personnel. The Licence Holder had to wait some 3 hours for the delivery to be completed by the site staff, he believes due to problems on site that day with a container pump. He then re-entered the LGV and proceeded through the weighbridge and was handed the full delivery paperwork. He then entered the access road to leave in the direction of Docks Road.
21. The Licence Holder stopped the tanker on the access road and stepped out of the vehicle cab. He explained that he did this to open the side discharge valve on the tanker and the tanker's top lid, in preparation for the tanker being cleaned at the tank wash in the nearby Docks. The wash facility, he explained, required these to be opened before the tanker lorry could enter the tank wash itself. He therefore opened these in advance of entering the tank wash site, as a matter of practice, so as to avoid potential longer delays in queuing for the tank wash (which may occur if other lorries entered the queue there whilst he opened the necessary valves and lid at that site). He explained that on all other previous occasions only a small amount of liquid was left on board the tanker (if any) after delivery, was non-hazardous, and this would be washed out as part of the tank washing process.
22. On this occasion he says he discovered, after the fact, that having taken the planned delivery amount of the Acetic Anhydride the Dow Corning site staff had left some 260 kg of this liquid in the tank. The Licence Holder had been given the weighbridge

docket that had confirmed this, but stated to me that he had not read this as he had forgotten his glasses that day. He states that he had not expected any liquid to remain on board in this amount. He explained that he noticed the discharge from the side valve when he had climbed half way up the ladder to the rear of the tanker to open the top lid. He explained that he did not return to close the valve as he assumed the discharge would stop by the time he got back down. He therefore carried on and states that the discharge had stopped by the time he got back off the tanker. He informed me that he called his employer and advised him of the spill and his employer said that they would deal with this. The Police Letter confirms that the employer took a call on the matter but were led to believe it was a small spill only. The Licence Holder then drove off and out of the site to the tank wash.

23. The Licence Holder was most adamant in his evidence to me that there was no financial gain to him for his acts. He submits that he merely wanted to be time-efficient in carrying out his duties for his employer which he sees as a general expectation. He accepts that his actions on the access road were contrary to the instructions given in his driver's handbook (to only open the valves at the tank wash site) and he had not been instructed otherwise by his employer.
24. The Licence Holder accepts that he cannot vindicate his acts and reasoning that day to me, other than to emphasise that the discharge was completely unexpected by him and that his responses at the time were not typical of his normally safe practices over many years of driving including the carriage of hazardous and dangerous materials.. He submits to me that his mind was elsewhere at this particular time due to **REDACTED**, that he was not thinking properly and he panicked. He said that nothing was making sense and he 'lost the plot' at the time, hoping the amount discharged would be a small amount.
25. I do not find the explanations of the Licence Holder summarised in paragraphs 21 to 24 above to be entirely credible noting that he fails to provide any convincing explanations for these acts and omissions bearing in mind he is an ADR trained and very experienced driver who is otherwise described to me as exemplary. His description of events also conflicts in material respects to the CCTV footage considered below (which I prefer).

26. Following the hearing and having heard the Licence Holder's account summarised above I have viewed the CCTV footage. I find that this accords with the description of the Licence Holder's conduct shown by this footage which is set out in the Police Letter, save only that I accept the Licence Holder's assertion that the discharge valves are on the side only and not at the top of the tanker (which is not material to my decision in any event).
27. The Licence Holder has not sought to challenge the CCTV evidence. In evaluating the CCTV evidence I find that this is cogent, contemporaneous compelling evidence of the incident, as recorded by Dow Corning on site cameras at that time. I give very significant weight to this evidence. I consider it absolutely essential for any person to fully understand the reasons for my decision to watch this footage themselves.
28. The CCTV evidence is I find inconsistent with the Licence Holder's verbal evidence at the hearing in some material respects and in preferring the CCTV evidence as a whole the credibility of the account as given by the Licence Holder concerning the discharge and the extent of this in terms of volume and continuation is reduced commensurately.
29. On balance, I am drawn to conclude that contrary to his own evidence the Licence Holder would have been aware of the significant discharge of liquid from the tanker from the point he opened the discharge valve on the side of the lorry. The CCTV clearly shows the liquid pouring out from the valve once it was opened and before the driver moves round into view to climb the rear ladder of the vehicle.-as well as a rapidly growing pool of liquid spilling onto the ground. Despite this liquid being a hazardous substance the Licence Holder takes no apparent interest or preventative action to limit this discharge then or at any time thereafter- and in fact acerbates the rate of discharge by proceeding to climb up the tanker and open the top lid which increases the flow rate. The liquid is visibly still discharging from the tanker when he returns to ground level, with a large puddle clearly evident on the ground. The Licence Holder then (without any apparent concern or panic or haste) removes the hazardous marking signs from the tanker and drives off leaving the spill unattended -and with liquid still splashing out from the tanker onto the road behind him. The CCTV footage also supports my concern that the liquid is likely have spilled on or

against the body and rear tyre of the vehicle before he drove off ,and it is possible that other vehicles accessing the site may have driven over the puddle of highly corrosive liquid. The access road is seen on the footage to be in regular use by vehicles entering and leaving the site. The spill was contained and cleaned up by a Dow Corning emergency response team only after another driver mentioned the smell and his subsequent breathing difficulties.

30. I am asked to take into particular account in considering the offending conduct some personal **REDACTED** problems experienced by the Licence Holder this time which it is submitted may have affected the Licence Holder's judgment and concentration, as well as his belief that the discharge would be limited and stop shortly. I do not consider that these matters can be accepted as circumstances which go to mitigate the conduct itself in this case in any significant way. The Licence Holder is a trained ADR certificate Holder and experienced driver of hazardous materials and is therefore fully aware of the dangerous and hazardous nature of the liquid in question. He did not check the delivery paperwork given to him by Dow Corning after delivery and he deliberately ignored the instructions of his employer in opening the tanker valve and lid in an area not designed to contain and control any release of the controlled hazardous substance. After doing so he then did not take any of the steps that I would reasonably expect of an experienced ADR certified driver faced with any spill of a hazardous substance, aggravated in this case by the size of the spill. The Licence Holder remained close to the Dow Corning chemical site - which had a trained and equipped emergency response team and could have informed the emergency services and/or company very quickly of the spill and enabled the appropriate prompt clean-up of the discharge in accordance with the strict requirements specified for this particular substance. The hazardous materials warning signs on the back of the lorry were taken off by the driver - while the discharge remained a short distance from him, and still these did not prompt him to seek the necessary immediate help in the vicinity. The CCTV shows the Hazchem codes on the tanker vehicle registration FX14 AEC at the time as 3W 1715 with additional signs informing that the chemical is corrosive, flammable and hazardous to the environment. The codes inform the chemical carried as well as the emergency action and personal protection that should be taken in the event of an incident. The acts and omissions of this Licence Holder were ones which a person exercising

reasonable care would not commit, particularly taking into account his training as an ADR certified driver and the trust placed in him in issuing such certification enabling him to undertake the transport of dangerous and hazardous goods and materials.

31. Having evaluated the evidence and made my findings I am drawn to conclude that, at best, the Licence Holder was reckless - demonstrating a wilful blindness to the risk of the offending by acting as he did and the risk was nevertheless taken. Once the offence was committed he then failed to take the reasonable steps I would expect by him to minimise the actual harm caused, particularly with his knowledge of the serious hazards relating to this highly corrosive and flammable liquid.
32. In favour of the Licence Holder I note particularly that there is no information before me of any previous adverse conduct relevant to the fitness of the Licence Holder to hold the UK driving licence entitlement to drive LGV or PCV or of any further offences since the offence of 14 April 2016. This draws me to conclude on balance that this was an isolated incidence of harm albeit the Licence Holder by his own admission accepted that he has stopped on the access road on other occasions and opened the valves and lid, fortunately without apparent incident. The Licence Holder has provided a reference in support of his continuation to drive LGV from his employer corroborating his evidence that he has otherwise been of exemplary conduct. This employer has also continued to employ him on full basic pay during the period of suspension ordered by the Traffic Commissioner.
33. Having considered the above and the guidance and directions contained in STC Statutory Document no 6, I have ordered as in paragraph no 1 above. I have concluded that in this case, on balance, this is the appropriate action under the Act having regard to this Licence Holder's relevant conduct as a whole, including the very serious offence of 14 April 2016 as recorded by the CCTV evidence and the risk of harm to himself and others and the environment arising from this which he caused. The Licence Holder's misconduct on that day, as a trained and experienced driver of LGV transporting dangerous and hazardous goods, was so serious that, on balance, despite his otherwise good history as the driver of a motor vehicle with no other convictions, the remorse expressed by him, the mitigating personal circumstances he submits affected his judgment that day, the sentence passed by

the Magistrates and the hardship resulting from this and the suspension of his LGV and PCV driving entitlements since 5 March 2017, and lessons he states that have been learned from this, I have determined as in paragraph 1 above.

**Miss Fiona Harrington, LL.B (Hons), Solicitor
Deputy Traffic Commissioner for the North East of England**

12 April 2017